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25763 7590 01/22/2007 DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT SUITE 1500 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402-1498			EXAMINER MERCHANT, SHAHID R	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/901,488

Applicant(s)

DAUM, WOLFGANG

Examiner

Shahid R. Merchant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8-15-2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Examiner has given consideration to prior art, U.S. Patent Application Publication 2002/0120501 that was filed on March 1, 2001. U.S. Patent Application Publication 2002/0120501 claims benefit of provisional application 60/219,277 which was filed on July 19, 2000. For examining purposes of this application, the effective filing date for U.S. Patent Application Publication 2002/0120501 will be July 19, 2000.
2. Examiner has given consideration to prior art, U.S. Patent Application Publication 2003/0014326 that was filed on June 6, 2002. U.S. Patent Application Publication 2003/0014326 claims benefit of provisional application 60/141,530 which was filed on June 23, 1999. For examining purposes of this application, the effective filing date for U.S. Patent Application Publication 2003/0014326 will be June 23, 1999.

### ***Claim Objections***

3. Claim 10 objected to because of the following informalities: the word "fulfillment" is misspelled. Appropriate correction is required.
4. Claim 35 objected to because of the following informalities: the word "seller" appears twice. Appropriate correction is required.
5. Claims 41 and 43 objected to because of the following informalities: improper use of a Markush group-type claim. For examining purposes, Examiner will assume Applicant is attempting to invoke a Markush group-type claim for claims 41 and 43. However, the wording needs to reflect this. The term "group comprising" should be

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changed to "group consisting" to be in the proper Markush group-type claim form.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 25 and 35 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. The term "approximately constant" in claim 25 is a relative term which renders the claim indefinite. The term "approximately constant" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant needs to further define "approximately constant" relative to computing expenditure. Appropriate correction is required.

9. The term "other specific identification" in claim 35 is a relative term which renders the claim indefinite. The term "other specific identification" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant needs to further define "other specific identification" relative to buyer or seller information profile. Appropriate correction is required.

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10. Claims 18-24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 18: Applicant refers to "said method", however Examiner is unclear which "method" applicant is referring to. For purposes of examination, Examiner will use "statistical method" as said method. Appropriate correction is required.

12. Claims 19-24: Applicant refers to "said development method", however Examiner is unclear which "method" applicant is referring to. For purposes of examination, Examiner will use "statistical development method" as said method. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

13. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. Claim 15-17 rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The phrases "tends to reduce" and "tends to increase" brings into question whether the result is repeatable. MPEP § 2106 cites "Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be

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substantially repeatable or the process must substantially produce the same result again. In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000)".

***Claim Rejections - 35 USC § 102***

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims 1-6, 8-16, 19, 25-31, 33, 34 and 41-46 rejected under 35 U.S.C. 102(e) as being anticipated by Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A).

17. As per claim 1, Hurwitz teaches a method for operating a marketplace for sale of information products between information sellers and information buyers, comprising:  
connecting information sellers and buyers to communicate offers and  
communicate acceptance of offers for sale or purchase of information products (see column 2, lines 47-63);

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for a sales or purchase transaction entered into, facilitating at least one transaction payment between the information seller and buyer in such transaction (see column 2, lines 60-63); and

for a transaction at least partly performed, collecting evaluation data from the information seller and information buyer on qualities of interest to future participants in the marketplace who may enter into information product transactions with such information seller and information buyer (see abstract, column 3, lines 30-67 and column 4, lines 1-12).

18. As per claim 2, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches where the information buyer and information seller in a sales transaction are anonymous to each other and known to a marketplace operator (see column 2, lines 13-15).

19. As per claim 3, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches comprising processing the evaluation data under a weighting scheme and making the weighted evaluation data available to participating sellers and buyers (see column 4, lines 1-4 and 50-55).

20. As per claim 4, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches wherein numerical scores are used in the evaluation data of the information seller and information buyer and wherein statistical methods are used for processing of evaluation data (see column 4, lines 1-4).

21. As per claim 5, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches wherein the step of facilitating a transaction payment comprises

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providing clearing house services for financials of the marketplace (see column 2, lines 64-67, column 3, lines 1-12 and Figure 1, item 22).

22. As per claim 6, Hurwitz teaches the method of claim 1 as described above.

Hurwitz further teaches wherein the step of connecting information sellers and information buyers to communicate offers and communicate acceptance comprises facilitating negotiation for a price for an information product (see column 2, lines 47-50 and Figure 1, item 14).

23. As per claim 8, Hurwitz teaches the method of claim 1 as described above.

Hurwitz further teaches wherein the act of collecting evaluation data from the information seller and information buyer on qualities of interest comprises collecting scores on evaluation scales from the group consisting of: price setting, timeliness of delivery and fairness of service (see column 2, lines 17-21).

24. As per claim 9, Hurwitz teaches the method of claim 1 as described above.

Hurwitz further teaches wherein the evaluation data results in a rank system with scores that aid pricing judgments of participating buyers and sellers (see column 4, lines 6-9).

25. As per claim 10, Hurwitz teaches the method of claim 1 as described above.

Hurwitz further teaches wherein the act of collecting evaluation data comprises collecting scores on evaluation scales to evaluate a seller from the group consisting of: duration of handling, importance of the subject matter to buyer, results, usefulness, gain of information and fulfillment of personal expectations (see column 3, lines 53-55).

26. As per claim 11, Hurwitz teaches the method of claim 1 as described above.

Hurwitz further teaches wherein the act of collecting evaluation data comprises

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collecting scores on evaluation scales to evaluate a buyer from the group consisting of: accuracy of problem definition and extent of supplied background information (see column 3, lines 13-16).

27. As per claim 12, Hurwitz teaches the method of claim 3 as described above. Hurwitz further teaches wherein the act of processing the evaluation data under a weighting scheme and making the weighted evaluation data available to participating sellers and buyers comprises processing the past history of a buyer or seller with respect to: the number and scope of previous sales transactions within the network, their distribution in time and scores provided as part of evaluation data (see column 4, lines 1-12).

28. As per claim 13, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches comprising the steps of enrolling of information product marketplace sellers and buyers, administrating the connecting between sellers and buyers, and calculating an administrative fee based on the fees of a seller in an information product transaction (see column 3, line 19).

29. As per claim 14, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches comprising compiling in a data base: sales transaction identification data, data defining the times for executing development and delivery of an information product, evaluation data comprising rank marks and order marks of buyers and sellers and the rules for at least one weighting scheme for evaluation data (see column 3, lines 18-20, column 4, lines 1-12 and Figure 1, items 24, 32).

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30. As per claim 15, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches wherein the price of an information product is determined at least in part by evaluation data for past transactions, and favorable evaluation data for a buyer tends to reduce the price paid to the seller (see column 2, lines 21-24).

31. As per claim 16, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches wherein the price of an information product is determined at least in part by evaluation data for past transactions, and favorable evaluation data for a seller tends to increase the price paid to the seller (see column 2, lines 24-26).

32. As per claim 19, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches wherein the evaluation data include numerical scores and a statistical development method is used to develop at least one of order marks or rank marks, said development method comprising no decay and unitary weightings with constant or linear-cyclic trend and equally or normally distributed variation (see column 4, lines 7-9).

33. As per claim 25, Hurwitz teaches the method of claim 1 as described above. Hurwitz further teaches wherein a statistical method is selected for computing rank marks for an evaluated buyer or seller that keeps the computing expenditure for development of such marks approximately constant despite increasing numbers of transactions and resulting order marks for the buyer or seller (see column 4, lines 9-12).

34. As per claim 26, Hurwitz teaches a computer program product comprising: a computer usable medium and computer readable program code embodied on said computer readable medium for operating a marketplace for trading in information

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products between information sellers and information buyers, the computer readable code comprising:

computer readable program code configured to connect information sellers and information buyers to communicate offers and communicate acceptance of offers for trading in information products (see column 2, lines 47-63, column 5, lines 12-17, 32-39 and Figure 3, item 422);

computer readable program code configured, for a trading transaction entered into, to facilitate at least one transaction payment between the information seller and information buyer in such transaction (see column 2, lines 60-63, column 5, lines 12-17, 32-39 and Figure 3, item 422);

computer readable program code configured, for a trading transaction at least partly performed, to collect evaluation data from the information seller and information buyer on qualities of interest to future participants in the marketplace who may enter into information product transactions with such information seller and information buyer (see abstract, column 3, lines 30-67, column 4, lines 1-12, column 5, lines 12-17, 32-39 and Figure 3, item 422); and

computer readable program code configured to process the evaluation data under a weighting scheme and to make the weighted evaluation data available to participating sellers and buyers (see column 4, lines 1-4, 50-55, column 5, lines 12-17, 32-39 and Figure 3, item 422).

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35. As per claim 27, Hurwitz teaches a computer system for operating a marketplace for trading in information products between information sellers and information buyers, comprising:

a component that connects information sellers and information buyers to communicate offers and communicate acceptance of offers for trading in information products (see column 2, lines 47-63 and Figure 3, item 400,414);

a component that, for a trading transaction entered into, facilitates at least one transaction payment between the information seller and information buyer in such transaction (see column 2, lines 60-63 and Figure 3, item 400, 414);

a component that, for a trading transaction at least partly performed, collects evaluation data from the information seller and information buyer on qualities of interest to future participants in the marketplace who may enter into transactions with such information seller and information buyer (see abstract, column 3, lines 30-67, column 4, lines 1-12 and Figure 3, item 400,414); and

a component that processes the evaluation data under a weighting scheme and makes the weighted evaluation data available to participating sellers and buyers (see column 4, lines 1-4, 50-55 and Figure 3, item 400,414).

36. As per claim 28, Hurwitz teaches the system of claim 27 as described above. Hurwitz further teaches wherein the information buyer and seller in a sales transaction are anonymous to each other and known to a marketplace operator (see column 2, lines 13-15).

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37. As per claim 29, Hurwitz teaches the system of claim 27 as described above.

Hurwitz further teaches wherein numerical scores are used in the evaluation data of the information seller and information buyer (see column 4, lines 1-12).

38. As per claim 30, Hurwitz teaches the system of claim 27 as described above.

Hurwitz further teaches wherein statistical methods are used in the component that processes evaluation data (see column 4, lines 1-4).

39. As per claim 31, Hurwitz teaches the method of facilitating transactions between buyers and sellers of information products comprising:

receiving from a potential buyer a proposal for an information product purchase (see column 1, lines 13-15 and column 3, lines 7-10);

communicating to at least one potential seller the potential buyer's proposal for an information product purchase, together with an associated buyer profile file (see column 3, lines 7-23);

receiving from at least one potential seller a proposal for an information product sale corresponding to the potential buyer's proposal for an information product purchase (see column 3, lines 15-17);

communicating to the potential buyer the at least one corresponding sale proposal together with an associated seller profile file (see column 3, lines 7-23);

facilitating formation of a contract between the potential buyer and at least one potential seller and payment in accordance with that contract (see column 2, lines 60-63 and column 3, lines 20-23); and

for a purchase facilitated by the method, collecting from the buyer information on its experience with the seller involved in the purchase and using such information to update the seller profile file and collecting from said seller information on its experience with the buyer involved in the purchase and using such information to update the buyer profile file (see column 3, lines 35-59).

40. As per claim 33, Hurwitz teaches the system of claim 31 as described above. Hurwitz further teaches wherein the step of communicating a buyer profile file comprises communicating information about the buyer's problem definition ability as experienced by prior sellers dealing with this buyer (see column 3, lines 47-59).

41. As per claim 34, Hurwitz teaches the system of claim 31 as described above. Hurwitz further teaches wherein the step of communicating a seller profile file comprises communicating information about the quality of a seller's information products as experienced by prior buyers dealing with this seller (see column 3, lines 47-59).

42. As per claim 41, Hurwitz teaches the system of claim 31 as described above. Hurwitz further teaches wherein the step of collecting from the buyer information on its experience with the seller involved in the purchase comprises collecting information responsive to criteria from the group comprising timeliness of delivery (see column 3, lines 50-55).

43. As per claim 42, Hurwitz teaches the system of claim 41 as described above. Hurwitz further teaches wherein the step of collecting from the buyer information on its experience with the seller involved in the purchase comprising collecting information based on predefined rating scales (see column 4, lines 7-9).

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44. As per claim 43, Hurwitz teaches the system of claim 31 as described above. Hurwitz further teaches wherein the step of collecting from said seller information on its experience with the buyer involved in the purchase comprises collecting information responsive to criteria from the group comprising extent of the supplied background information (see column 3, lines 50-59 and 64-65).

45. As per claim 44, Hurwitz teaches the system of claim 43 as described above. Hurwitz further teaches wherein the step of collecting from the seller information on its experience with the buyer involved in the purchase comprises collecting scores based on predefined rating scales (see column 4, lines 7-9).

46. As per claim 45, Hurwitz teaches the method of facilitating transactions between buyers and sellers of information products comprising:

receiving from a potential seller a proposal for an information product sale (see column 3, lines 7-10);

communicating to a potential buyer the potential seller's proposal for an information product sale, together with an associated seller profile file (see column 3, lines 7-23);

receiving from a potential buyer a proposal for an information product purchase corresponding to the potential seller's proposal for an information product sale (see column 3, lines 12-15);

communicating to the potential seller the corresponding purchase proposal together with an associated buyer profile file (see column 3, lines 7-23);

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facilitating formation of a contract between the potential seller and at least one potential buyer and payment in accordance with that contract (see column 2, lines 60-63 and column 3, lines 20-23); and

for a purchase facilitated by the method, collecting from the buyer information on its experience with the seller involved in the purchase and using such information to update the seller profile file and collecting from said seller information on the buyer involved in the purchase and using such information to update the buyer profile file (see column 3, lines 35-59).

47. As per claim 46, Hurwitz teaches a computer program product comprising:

a computer usable medium and computer readable program code embodied on said computer readable medium for operating a marketplace for sale of information products between information sellers and information buyers, the computer readable code comprising: computer readable program code configured to receive from a potential buyer a proposal for an information product (see column 5, lines 12-17, 32-39, Figure 3, item 422 and column 1, lines 13-15 and column 3, lines 7-10);

computer readable program code configured to communicate to at least one potential seller the potential buyer's proposal for an information product, together with an associated buyer profile file (see column 5, lines 12-17, 32-39, Figure 3, item 422 and column 3, lines 7-23);

computer readable program code configured to receive from at least one potential seller a proposal for an information product sale corresponding to the potential

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buyer's proposal for an information product (see column 5, lines 12-17, 32-39, Figure 3, item 422 and column 3, lines 15-17);

computer readable program code configured to communicate to the potential buyer the at least one corresponding sale proposal together with an associated seller profile file (see column 5, lines 12-17, 32-39, Figure 3, item 422 and column 3, lines 7-23);

computer readable program code configured to facilitate formation of a contract between the potential buyer and at least one potential seller and payment in accordance with that contract (see column 5, lines 12-17, 32-39, Figure 3, item 422 and column 2, lines 60-63 and column 3, lines 20-23); and

computer readable program code configured, for a purchase facilitated by the method, to collect from the buyer information on its experience with the seller involved in the contract and using such information to update the seller profile file and collecting from said seller information on its experience with the buyer involved in the contract and using such information to update the buyer profile file (see column 5, lines 12-17, 32-39, Figure 3, item 422 and column 3, lines 35-59).

### ***Claim Rejections - 35 USC § 103***

48. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

49. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A) in view of Bell et al., U.S. Patent Application Publication 2002/0120501 (see attached PTO-892, Ref. B).

50. As per claim 7, Hurwitz teaches the method of claim 3 as described above. Hurwitz does not explicitly teach the method wherein the act of making weighted evaluation data available comprises presenting data in graphs.

Bell teaches wherein the act of making weighted evaluation data available comprises presenting data in graphs (see paragraph 248).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Bell to present survey data in graphs because it is one of several ways of presenting data to a content provider as taught by Bell (see paragraph 248).

51. Claim 18, 20-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A) in view of Dueck et al., U.S. Patent No. 6,418,398 (see attached PTO-892, Ref. E).

52. As per claim 18, Hurwitz teaches the method of claim 1 as described above. Hurwitz teaches wherein the evaluation data include numerical scores (see column 4, lines 7-9). Hurwitz does not explicitly teach wherein the evaluation data include a

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statistical method is used to develop marks, said method comprising development with constant or linear-cyclic trend and equally or normally distributed variation.

Dueck teaches wherein the evaluation data include a statistical method is used to develop marks, said method comprising development with constant or linear-cyclic trend and equally or normally distributed variation (see column 24, lines 1-11, Figure 13 and Figure 15).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Dueck to use statistical methods to develop marks because the graphs can be used for optimization of a system as taught by Dueck (see abstract).

53. As per claim 20, Hurwitz teaches the method of claim 1 as described above. Hurwitz teaches wherein the evaluation data include numerical scores (see column 4, lines 7-9). Hurwitz does not explicitly teach wherein the evaluation data includes a statistical development method is used to develop at least one of order marks or rank marks, said development method comprising a linear annual decay and a constant or linear-cyclic trend with equally or normally distributed variation.

Dueck teaches wherein the evaluation data includes a statistical development method is used to develop at least one of order marks or rank marks, said development method comprising a linear annual decay and a constant or linear-cyclic trend with equally or normally distributed variation (see column 25, lines 39-50).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Dueck to use statistical methods comprising a linear annual decay to develop marks because the graphs can be used for optimization of a system as taught by Dueck (see abstract and column 25, lines 39-50).

54. Referring to claims 21-24. Claims 21-24 are rejected under the same rationale as set forth above in claim 20.

The Dueck references discloses a method of using linear decay and exponential decay as a statistical methods. The Dueck reference does not disclose specific decay methods like trigonometric annual decay, root-extension decay and arc-tangent decay.

The Examiner notes (with reference to claim 20), that adding specific decay methods like trigonometric annual decay, root-extension decay and arc-tangent decay would not modify the operation of Dueck's invention. To have modified Dueck to have included various specific decay methods would have been obvious to the skilled artisan because the inclusion of such specific decay methods would have been an obvious matter of design choice in light of the method already discloses by Dueck. Such modification would not have otherwise affected Dueck and would have merely represented one of numerous steps that the skilled artisan would have found obvious for the purposes already disclosed by Dueck. Additionally, applicant has not persuasively demonstrated the criticality of providing this arrangement versus the arrangement discloses in Dueck. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70

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(CCPA 1950).

55. Claim 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A) in view of Ben-Meir et al., U.S. Patent Application Publication 2003/0014326 (see attached PTO-892, Ref. C).

56. As per claim 32, Hurwitz teaches the method of claim 31 as described above. Hurwitz does not explicitly teach wherein the information product involves development work and the contract formed involves milestones to measure progress of completion of development work.

Ben-Meir teaches wherein the information product involves development work and the contract formed involves milestones to measure progress of completion of development work (see paragraph 94).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Ben-Meir to disclose information products that include development work and contracts with milestones because it would allow buyers and sellers of these contracts to build long term value added business relationships as taught by Ben-Meir (see abstract and paragraph 94).

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57. Claims 35-37 rejected under 35 U.S.C. 103(a) as being unpatentable over Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A) in view of Singhal, U.S. Patent No. 6,938,022 (see attached PTO-892, Ref. D).

58. As per claim 35, Hurwitz teaches the method of claim 31 as described above. Hurwitz does not explicitly teach wherein at least one of the seller information profile and the buyer information profile do not include name or other specific identification of the potential seller or buyer.

Singhal teaches wherein at least one of the seller information profile and the buyer information profile do not include name or other specific identification of the potential seller or buyer (see abstract).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Singhal not to reveal the name of a potential buyer or seller because it helps protect the buyer or sellers private data in the information system and from the operators of the information system as taught by Singhal (see abstract).

59. As per claim 36, Hurwitz teaches the method of claim 31 as described above. Hurwitz does not explicitly teach wherein the step of facilitating formation of a contract comprises presenting to the buyer and seller a menu of form contracts for purchase of an information product.

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Singhal teaches wherein the step of facilitating formation of a contract comprises presenting to the buyer and seller a menu of form contracts for purchase of an information product (see abstract, column 3, lines 37-45 and Figure 9A, items 927-933).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Singhal to provide a menu of information products to the buyer or seller because it allows the user to easily choose a service from a menu and receive an estimate or quote for that service as taught by Singhal (see abstract and column 3, lines 37-45 and Figure 9A, items 927-933).

60. As per claim 37, Hurwitz and Singhal teach the method of claim 36 as described above. Hurwitz does not explicitly teach wherein the menu of form contracts includes contracts with different risk allocation provisions, allocating a greater or lesser degree of risk to buyer or seller.

Singhal teaches wherein the menu of form contracts includes contracts with different risk allocation provisions, allocating a greater or lesser degree of risk to buyer or seller (see abstract, column 3, lines 37-45 and Figure 9A, items 927, 928 and 932). Auto insurance (Figure 9A, item 927), life insurance (Figure 9A, item 928) and loan application (Figure 9A, item 932) are all based on different risk allocations of the buyer.

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Singhal to offer risk based information products because it allows the user to easily choose a risk based

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service from a menu and receive an estimate or quote for the risk based service as taught by Singhal (see abstract and column 3, lines 37-45 and Figure 9A, items 927, 928 and 932).

61. Claims 38-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A) in view of Padhi, **Financial Update**, Atlanta: Jan-Mar 2001, Vol. 14, Iss. 1; pg 2 (see attached PTO-892, Ref. U).

62. As per claim 38, Hurwitz teaches the method of claim 31 as described above. Hurwitz does not explicitly teach further comprising the step of providing contract administration services to the parties for monitoring the performance of the agreement against agreed milestones.

Padhi teaches further comprising the step of providing contract administration services to the parties for monitoring the performance of the agreement against agreed milestones (see paragraph 1 and 18).

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Padhi to provide contract administration services (mortgage originators) to the parties (Freddie Mac) for monitoring performance of the agreement against agreed milestones because it provides liquidity to mortgage originators and expands the availability of mortgages to consumers as taught by Padhi (see paragraph 1 and 18).

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63. As per claim 39, Hurwitz and Padhi teach the method of claim 38 as described above. Hurwitz does not explicitly teach wherein the step of providing contract administration service comprises providing milestone reminders to at least one of buyer and seller in accordance with agreed milestones.

Padhi teaches wherein the step of providing contract administration service comprises providing milestone reminders to at least one of buyer and seller in accordance with agreed milestones (see paragraph 18). Padhi teaches that servicing a loan includes collecting principal and interest from borrowers, monitoring delinquencies and executing necessary foreclosures.

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz and Padhi to have contract administration services provide milestone reminders (monthly mortgage payments- principal and interest) to buyers or sellers because it allows them to make profit on the servicing of loans as taught by Padhi (see paragraph 18).

64. Claim 40 rejected under 35 U.S.C. 103(a) as being unpatentable over Hurwitz, U.S. Patent No. 6,856,963 (see attached PTO-892, Ref. A) in view of Padhi, **Financial Update**, Atlanta: Jan-Mar 2001, Vol. 14, Iss. 1; pg 2 (see attached PTO-892, Ref. U) and further in view of Roosevelt, American Banker (pre-1997 fulltext), New York, N.Y.: April 5, 1991, Vol. 156, Iss. 65; pg NOPGCIT (see attached PTO-892, Ref. V).

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65. As per claim 40, Hurwitz and Padhi teach the method of claim 39 as described above. Hurwitz and Padhi do not explicitly teach wherein the step of providing contract administration services comprises providing milestone audits of seller performance against milestone criteria.

Roosevelt teaches wherein the step of providing contract administration services comprises providing milestone audits of seller performance against milestone criteria (see paragraph 11). Roosevelt teaches the method of performing routine audits of seller (mortgage lender) to detect fraud.

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hurwitz, Padhi and Roosevelt to perform routine audits against milestone criteria's because it can detect fraud as taught by Roosevelt (see paragraph 11).

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### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid R. Merchant whose telephone number is 571-270-1360. The examiner can normally be reached on First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on 571-272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SRM

  
MATTHEW S. GART  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600